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Attorneys for Plaintiff
Heritage Lace, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HERITAGE LACE, INC.,	:	
	:	
Plaintiff	:	Civil Action No. 18 CV-_____ ()
	:	
v.	:	
	:	
UNDERWRAPS COSTUME CORPORATION	:	<u>COMPLAINT</u>
	:	
	:	Trial By Jury Demanded
Defendant.	:	

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Plaintiff Heritage Lace, Inc. (hereinafter referred to as “Plaintiff” or “Heritage”) through its undersigned attorneys, complaining of Underwraps Costume Corporation (hereinafter referred to as “Defendant” or “Underwraps”) alleges as follows:

COUNT I

JURISDICTION AND VENUE

1. This action arises under the U.S. Copyright Act of 1976, 17 U.S.C. §§ 101 et seq. Jurisdiction is vested in this Court under 28 U.S.C. §§ 1331 and 1338 (a).

2. Venue is proper in this district under 28 U.S.C. § 1391 in that Underwraps has an office and place of business within this district; the infringing products complained of herein were sold into this district and in that, upon information and belief, a substantial part of the events giving rise to the claims asserted in this Complaint occurred in this district.

THE PARTIES

3. Heritage is a corporation duly organized and existing under the laws of the State of Iowa, with its principal place of business at 309 South Street, Pella, Iowa 50219.

4. Underwraps is, upon information and belief, a corporation organized and existing under the laws of the State of California, having a principal place of business at 1500 Rosecrans Avenue, Suite 500, Manhattan Beach, CA 90266 and a showroom at 230 5th Avenue, Suite 308, New York, NY 10001.

FACTS

5. Heritage is, and for some time has been, engaged in the design, manufacture and sale of knit lace fabrics of original and distinctive design and has, over the past decades, earned a well deserved and enviable reputation in the trade for providing unique and original lace fabric designs. Heritage sells its lace fabric designs within this judicial district, throughout the United States of America and throughout the world.

6. In 2006, original designs were created in lace fabric with a spider web theme, one of which Heritage designates as Spider Web Mantle Runner.

7. Said lace fabric design contains material which is wholly original and is copyrightable subject matter under the laws of the United States of America.

8. In 2006, Heritage's said lace fabric design was published.

9. Since the publication date of such lace fabric design, all of the provisions of Title 17 of the United States Code, and all of the laws governing copyright have been duly complied with by Heritage which applied to register its claim to copyright therein, and a Certificate of Copyright Registration has been duly received by Heritage from The Register of Copyrights pertaining to said lace fabric design.

10. Heritage is the sole proprietor of all right, title and interest in and to the copyright in said lace fabric design.

11. A copy of a representation of said lace fabric design is annexed hereto and identified as "Exhibit A." A copy of the Copyright Registration Certificate for said lace fabric design is annexed hereto and identified as "Exhibit B."

12. Subsequent to the publication by Heritage of said lace fabric design, Defendant infringed Heritage's copyright in such fabric design by importing, reproducing, displaying, knitting, manufacturing, weaving, printing, reprinting, publishing, vending, distributing, selling, promoting or advertising, copies of said lace fabric design or by causing and/or participating in such importing, reproducing, displaying, knitting, manufacturing, weaving, printing, reprinting, publishing, vending, distributing, selling, promoting or advertising thereof, all in violation of the rights of Heritage under Section 106 of the Copyright Law, Title 17 of the United States Code.

13. A copy of a representation of at least one of such infringements by Defendant is annexed hereto and identified as "Exhibit C."

14. Heritage notified Defendant of such infringement, but Defendant, upon information and belief, continued to infringe even after receipt of such notification.

15. All of the Defendant's infringing acts as set forth herein were performed without the permission, license or consent of Heritage and, upon information and belief, comprise willful infringement.

16. Defendant has been enriched and Heritage has been damaged by the acts of Defendant alleged in this Count of the Complaint in an amount not as yet known, but believed to be in excess of \$150,000. The activities of Defendant as alleged herein with respect to Defendant's infringement are further and continuously damaging Heritage in a manner with respect to which Heritage has no adequate remedy at law.

COUNT II

17. Heritage repeats and realleges the assertions of paragraphs 1 through 5 above as if set forth herein, in their entirety.

18. In 2014, an original design was created in lace fabric with a Halloween theme, which Heritage designated as Skeletons, Skulls and Spider Webs Design.

19. Said lace fabric design contains material which is wholly original and is copyrightable subject matter under the laws of the United States of America.

20. In 2014, Heritage's said lace fabric design was published.

21. Since the publication date of such lace fabric design, all of the provisions of Title 17 of the United States Code, and all of the laws governing copyright have been duly complied with by Heritage which applied to register the claim to copyright in such design, and a Certificate of Copyright Registration has been duly received by Heritage from The Register of Copyrights pertaining to said lace fabric design.

22. Heritage is the sole proprietor of all right, title and interest in and to the copyright in said lace fabric design.

23. Copies of a representation of said lace fabric design is annexed hereto and identified as "Exhibit D." A copy of the Copyright Registration Certificate for said lace fabric design is annexed hereto and identified as "Exhibit E."

24. Subsequent to the publication by Heritage of said lace fabric design, Defendant infringed Heritage's copyright in such fabric designs by importing, reproducing, displaying, knitting, manufacturing, weaving, printing, reprinting, publishing, vending, distributing, selling, promoting or advertising, copies of said lace fabric design or by causing and/or participating in such importing, reproducing, displaying, knitting, manufacturing, weaving, printing, reprinting, publishing, vending, distributing, selling, promoting or advertising thereof, all in violation of the rights of Heritage under Section 106 of the Copyright Law, Title 17 of the United States Code.

25. A copy of a representation of at least one of such infringements by Defendant is annexed hereto and identified as “Exhibit F.”

26. Heritage notified Defendant of such infringement but, upon information and belief, Defendant continued to infringe even after receipt of such notification.

27. All of the Defendant’s infringing acts as set forth in this Count were performed without the permission, license or consent of Heritage and, upon information and belief, comprise willful infringement.

28. Defendant has been enriched and Heritage has been damaged by the acts of Defendant alleged in this Count of this Complaint in an amount not as yet known, but believed to be in excess of \$150,000. The activities of Defendant as alleged herein with respect to Defendant’s infringement are further and continuously damaging Heritage in a manner with respect to which Heritage has no adequate remedy at law.

WHEREFORE, Heritage demands:

- A. A preliminary and permanent injunction restraining, enjoining and prohibiting Defendant and it and their officers, servants, agents, employees, attorneys and representatives, and each of them, and those persons in active concert or participation with them from infringing the copyrights of Heritage including as evidenced by Copyright Registration Certificate Numbers
VA 1-662-502 and VA 2-001-687, including, but not limited to,

preventing it and them from importing, reproducing, displaying, knitting, manufacturing, weaving, printing, reprinting, publishing, vending, distributing, selling, promoting or advertising copies of such fabric designs or by causing and/or participating in such importing, reproducing, displaying, knitting, manufacturing, weaving, printing, reprinting, publishing, vending, distributing, selling, promoting or advertising by others.

- B. That Defendant be required to recall from all recipients thereof, including Amazon, and deliver to Heritage for destruction, all copies of Heritage's copyrighted fabric designs used for infringement of the copyrights therein, as well as all molds, stencils, plates, or other materials for making such infringing matter in the possession or under the control of Defendant or any of it or their agents, servants, employees, attorneys or other persons in privity with them.
- C. That Defendant be required to pay to Heritage its lost profits and such profits as Defendant has made in consequence of the infringement by Defendant of Heritage's copyrighted fabric designs and to account for all gains, profits and advantages relative to such infringements to be allowed Heritage by the Court and that such payment to Heritage be increased in view of the willful nature of the infringement or, at Heritage's option, in the alternative, to permit

Heritage, where appropriate, to recover statutory damages for such willful infringements.

- D. That Defendant be required to pay Heritage's attorneys' fees and costs in this action.
- E. That Heritage have such other and further relief as this Court may deem just and appropriate.

Jury Demand

Plaintiff hereby demands a trial by jury as to all issues so triable.

Respectfully submitted,

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Dated: OCT. 24, 2018

By: 
Philip H. Gottfried